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09/527,546	03/16/2000	Michael J. Conrad	202812	2335

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EXAMINER

PARTON, KEVIN S

ART UNIT PAPER NUMBER

2153

DATE MAILED: 04/19/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/527,546

Applicant(s)

CONRAD ET AL.

Examiner

Kevin Parton

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 12/30/2003 have been fully considered but they are not persuasive. Please see the following reasons and the associated new grounds of rejection below.

Please note that the new grounds of rejection was necessitated by the applicant's amendment.

2. Specifically, the applicant argues that "the Final Action appeared to be asserting that the term 'plug-in' in the claims is to be ignored" (page 8, paragraph 2). The argument is not persuasive because the term plug-in is clearly not ignored in the previous rejection, it is included explicitly in the rejected claims as shown. The response to arguments in the previous rejection points out that the term plug-in does not have a universally accepted definition and that the programs of the reference read on the claim. The term plug-in should be more clearly pointed out in the claim if a specific definition is to be considered. Even if the definition of the term as stated in the applicant's arguments is accepted ("an auxiliary program that works with a major software package to enhance its capability"), the reference of Desai et al. (USPN 5,781,703) would still read on the claim. The IRAs of Desai et al. (USPN 5,781,703) are auxiliary programs that work alongside the computer's OS (major software package) and enhance its capability by allowing it to track performance metrics. In this sense, the reference to Desai et al. (USPN 5,781,703) reads on the claimed "plug-in" even when the term is read to the definition of the applicant. Desai discloses all of the limitations of the claims as shown in the previous rejection.

3. The applicant further argues "it remains that the Desai et al. (USPN 5,781,703) reference has no teaching regarding "registering" performance metrics..." (page 9, paragraph 1). The argument is not persuasive because as shown in the previous rejection, the performance metrics

Art Unit: 2153

are registered to the IRA which is located on the client as a "plug-in". The "plug-in" is used to register metrics with the client. The performance metrics are then measured.

4. All further arguments are moot in view of the new grounds of rejection below.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 6-9, 11-13, 15-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al. (USPN 5,781,703) in view of Burgess et al. (USPN 5,796,633).

7. Regarding claim 1, Desai et al. (USPN 5,781,703) teach a system for network performance reporting comprising:

- a. A reporting server (figure 1). Note that the Proxy Controller is the reporting server.
- b. A plurality of reporting clients for collecting system performance data and reporting the system performance data to the reporting server (figure 1), each reporting client having a plug-in module for registering performance metrics for a system component with said each reporting client (column 4, lines 1-4) tracking the performance metrics (column 4, lines 8-10), and passing data on the performance metrics to the reporting client for reporting to the reporting server (column 4, line 10), the reporting server programmed to generate a

Art Unit: 2153

performance report based on system performance data reported by the reporting clients (column 2, lines 15-17; column 11, lines 27-30).

Although the system disclosed by Desai et al. (USPN 5,781,703) shows substantial features of the claimed invention, it fails to disclose that there is a client module separate from the plug-in module and this client module receives performance information and communicates it to the reporting server.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Desai et al. (USPN 5,781,703), as evidenced by Burgess et al. (USPN 5,796,633).

In an analogous art, Burgess et al. (USPN 5,796,633) discloses a system for remote monitoring of clients wherein there is a client module separate from the plug-in module and this client module receives performance information and communicates it to the reporting server (figure 2, element 42; column 2, lines 56-59).

Given the teaching of Burgess et al. (USPN 5,796,633), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Desai et al. (USPN 5,781,703) by employing the use of a separate client module for communication with the reporting server. This helps avoid redundancy in the client system since the client module could communicate all types of data in addition to the performance information.

8. Regarding claim 2, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 1. They further teach means wherein the client module of each of the reporting clients selectively tracks a core set of system attributes (column 4, lines 8-10; column 6, lines 17-20).

Art Unit: 2153

9. Regarding claim 3, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 1. They further teach means for including a reporting super-server for receiving system performance data from the reporting server and summarizing the system performance data received from the reporting server to generating a second performance report (column 3, lines 13-36).

10. Regarding claim 4, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 1. They further teach means including a data store for selectively archiving system performance data (column 3, lines 13-36). Note that in the reference, both the proxy controller and the data server are responsible for storing some amount of performance data. The proxy controller may remove unnecessary data in the data formatting process.

11. Regarding claim 6, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 1. They further teach means wherein the plug-in module of at least one of the reporting clients is programmed to register with said at least one reporting client an indication of how the data on the performance metrics are to be presented in the performance report generated by the reporting server (column 6, lines 45-50, 62-65).

Although the system disclosed by Desai et al. (USPN 5,781,703) shows substantial features of the claimed invention, it fails to disclose specifically means wherein information is specifically registered with a client module separate from the monitoring application.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Desai et al. (USPN 5,781,703), as evidenced by Burgess et al. (USPN 5,796,633).

Art Unit: 2153

In an analogous art, Burgess et al. (USPN 5,796,633) discloses a system for remote monitoring of clients wherein information is specifically registered with a client module separate from the monitoring application (column 4, lines 18-22).

Given the teaching of Burgess et al. (USPN 5,796,633), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Desai et al. (USPN 5,781,703) by employing the use of a separate client module for registering performance information. This benefits the system by allowing a running log to be kept by the client in case network access issues cause the reporting server to be unavailable.

12. Regarding claim 7, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 1. They further teach means wherein the performance report generated by the reporting server includes a summary summarizing status of system components monitored by the reporting clients and a plurality of per-client detailed reports regarding the reporting client (column 3, lines 43-45; column 4, lines 1-10).

13. Regarding claim 8, Desai et al. (USPN 5,781,703) teach a system for generating performance reports with means for:

- a. Connecting a reporting server with a reporting client, the reporting client responsible for monitoring a system component and having a plug-in module for tracking metrics specific to the system component (figure 1; column 4, lines 1-4).
- b. Registering, by the plug-in module with the reporting client, the metrics for reporting to the reporting server (column 6, lines 10-20, 40-65).

Art Unit: 2153

- c. Tracking, by the plug-in module, the metrics and providing data on the metrics to the reporting client (column 6, lines 43-45).
- d. Passing, by the reporting client, performance data including the data on the metrics to the reporting server (column 6, lines 45-47).
- e. Generating, by the reporting server, a performance report from the performance data passed by the reporting client (column 2, lines 15-20; column 3, lines 43-45).

Although the system disclosed by Desai et al. (USPN 5,781,703) shows substantial features of the claimed invention, it fails to disclose that there is a client module separate from the plug-in module and this client module receives performance information and communicates it to the reporting server.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Desai et al. (USPN 5,781,703), as evidenced by Burgess et al. (USPN 5,796,633).

In an analogous art, Burgess et al. (USPN 5,796,633) discloses a system for remote monitoring of clients wherein there is a client module separate from the plug-in module and this client module receives performance information and communicates it to the reporting server (figure 2, element 42; column 2, lines 56-59).

Given the teaching of Burgess et al. (USPN 5,796,633), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Desai et al. (USPN 5,781,703) by employing the use of a separate client module for communication with the

Art Unit: 2153

reporting server. This helps avoid redundancy in the client system since the client module could communicate all types of data in addition to the performance information.

14. Regarding claim 9, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 8. They further teach means including the step of tracking by the client module of the reporting client a core set of system attributes, and wherein the performance data passed by the reporting client to the reporting server includes data on the core set of system attributes (column 6, lines 10-20).

15. Regarding claim 11, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 8. They further teach means including the step of forwarding, by the reporting server, performance data to a reporting super-server (column 3, lines 13-36).

16. Regarding claim 12, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 8. They further teach means including the step of selectively archiving performance data in a data store (column 3, lines 13-36).

17. Regarding claim 13, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 8. They further teach means wherein the step of registering the metrics includes providing an indication of how the data on the metrics are to be presented in the performance report generated by the reporting server (column 6, lines 10-20, 40-65).

18. Regarding claim 15, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 8. They further teach means including the step of providing, by the plug-in module, non-numeric performance data concerning the system component being monitored (column 6, lines 10-20).

Art Unit: 2153

19. Regarding claim 16, Desai et al. (USPN 5,781,703) teach a system for monitoring performance of computer system components by a reporting client having a plug-in module with means for:

- a. Registering, by the plug-in module, metrics for monitoring performance of a system component on a host computer of the reporting client (column 6, lines 10-20, 40-65).
- b. Tracking, by the plug-in module, the metrics during operation of the host computer (column 6, lines 43-45).
- c. Providing, by the plug-in module, data on the metrics from the tracking (column 6, lines 45-47).
- d. Forwarding, by the reporting client, the data on the metrics to a reporting server for generating a performance report (column 6, lines 45-47).

Although the system disclosed by Desai et al. (USPN 5,781,703) shows substantial features of the claimed invention, it fails to disclose that there is a client module separate from the plug-in module and this client module receives performance information and communicates it to the reporting server.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Desai et al. (USPN 5,781,703), as evidenced by Burgess et al. (USPN 5,796,633).

In an analogous art, Burgess et al. (USPN 5,796,633) discloses a system for remote monitoring of clients wherein there is a client module separate from the plug-in module and this

Art Unit: 2153

client module receives performance information and communicates it to the reporting server (figure 2, element 42; column 2, lines 56-59).

Given the teaching of Burgess et al. (USPN 5,796,633), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Desai et al. (USPN 5,781,703) by employing the use of a separate client module for communication with the reporting server. This helps avoid redundancy in the client system since the client module could communicate all types of data in addition to the performance information.

20. Regarding claim 17, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 16. They further teach means wherein the step of registering the metrics includes providing an indication of how the data on the metrics are to be presented in the performance report (column 6, lines 10-20, 40-65).

21. Regarding claim 19, Desai et al. (USPN 5,781,703) teach all the limitations as applied to claim 16. They further teach means for collecting, by the client module of the reporting client, data on a core set of system attributes, and providing the collected data on the core set of system attributes to the reporting server for generating the performance report (column 6, lines 10-20).

22. Claims 5, 14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al. (USPN 5,781,703) and Burgess et al. (USPN 5,796,633) as applied to claims 1, 8, and 16, respectively above, and further in view of Hamilton, III et al. (USPN 6,098,181).

23. Regarding claims 5, 14, and 18, although the system disclosed by Desai et al. (USPN 5,781,703) and Burgess et al. (USPN 5,796,633) (as applied to claims 1, 8, and 16) shows substantial features of the claimed invention, it fails to disclose means wherein the plug-in module is programmed to provide data indicating a pass/fail status of a system component

Art Unit: 2153

monitored by the at least one reporting client for inclusion in the performance report generated by the reporting server.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Desai et al. (USPN 5,781,703) and Burgess et al. (USPN 5,796,633), as evidenced by Hamilton, III et al. (USPN 6,098,181).

In an analogous art, Hamilton, III et al. (USPN 6,098,181) disclose a system for monitoring of performance of remote network elements. They teach means wherein the plug-in module is programmed to provide data indicating a pass/fail status of a system component monitored by the at least one reporting client for inclusion in the performance report generated by the reporting server (figure 2). Note that in the reference, the primary returned value is a pass/fail attribute of a monitored node.

Given the teaching of Hamilton, III et al. (USPN 6,098,181), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Desai et al. (USPN 5,781,703) and Burgess et al. (USPN 5,796,633) by employing the use of a pass/fail indicator as one of the returned performance results. This would benefit the system by giving the most simple and easily read indication of nominal system status. In addition, action could be taken more quickly at a higher level if the returned attribute were portrayed in the simplest possible manner.

24. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al. (USPN 5,781,703) and Burgess as applied to claim 8 above, and further in view of Haggard et al. (USPN 6,148,335).

Art Unit: 2153

25. Regarding claim 10, although the system disclosed by Desai et al. (USPN 5,781,703) and Burgess et al. (USPN 5,796,633) (as applied to claim 8) shows substantial features of the claimed invention, it fails to disclose means wherein the core set of system attributes includes memory usage and event log errors.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Desai et al. (USPN 5,781,703) and Burgess et al. (USPN 5,796,633), as evidenced by Haggard et al. (USPN 6,148,335).

In an analogous art, Haggard et al. (USPN 6,148,335) discloses a system for remote monitoring and reporting of network elements with means wherein the core set of system attributes includes memory usage and event log errors (column 2, lines 62-65). Note that in the reference, errors are reported and memory availability (or conversely, usage) is reported.

Given the teaching of Haggard et al. (USPN 6,148,335), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Desai et al. (USPN 5,781,703) and Burgess et al. (USPN 5,796,633) by employing the reporting of memory status and event messages to the server. These are only two examples of a number of advantageous metrics that can be recorded. The benefit to the system would be the constant knowledge of the amount of memory in use and available in order to make decisions on where more memory must be added, or where memory leaks may exist.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Parton whose telephone number is (703)306-0543. The examiner can normally be reached on M-F 8:00AM - 4:30PM.

Art Unit: 2153

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (703)305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin Parton  
Examiner  
Art Unit 2153

ksp

  
**FRANTZ B. JEAN**  
**PRIMARY EXAMINER**